

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALFRED EUGENE MACHADO,

Petitioner,

No. CIV S-05-0818 MCE GGH P

vs.

THOMAS L. CAREY, Warden, et al.,

Respondents.

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee.

Petitioner alleges that the Board of Prison Terms (BPT) has improperly classified him as a “life prisoner” and used this classification to find him unsuitable for parole. Petitioner contends that this improper classification violates his plea agreement, pursuant to which he was sentenced to 15 years to life for second degree murder.

Court records indicate that petitioner is proceeding with another habeas action in this court, CIV S-05-0278 LKK GGH P, in which he alleges that his sentence violates his plea agreement. In CIV S-05-0278 LKK GGH P, petitioner argues that he was told that he would do 8 years if he kept his nose clean. The claim raised in the instant action is encompassed by the claims raised in CIV S-04-278. In CIV S-04-278 the court will determine the terms of

petitioner's plea agreement and whether petitioner's continued incarceration violates these terms. Therefore, the instant action should be dismissed as duplicative of CIV S-04-278.

Accordingly, IT IS HEREBY RECOMMENDED that the instant action be dismissed as duplicative of CIV S-04-278 LKK GGH P

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, petitioner may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: 6/17/05

/s/ Gregory G. Hollows

GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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